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7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF CALIFORNIA
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11 MEDICAL DEVELOPMENT
12 INTERNATIONAL, a Delaware
corporation,

NO. CIV. 2:07-2199 WBS EFB

13 Plaintiff,

MEMORANDUM AND ORDER RE:
MOTION TO TRANSFER VENUE

14 v.

15 CALIFORNIA DEPARTMENT OF
16 CORRECTIONS AND
REHABILITATION, ROBERT SILLEN,
17 individually and as Receiver,
and J. CLARK KELSO, as
18 Receiver,

Defendants.
19 _____/

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22 Plaintiff Medical Development International ("MDI")
23 brought this action against defendants California Department of
24 Corrections and Rehabilitation ("CDCR"), Robert Sillen
25 ("Sillen"), individually and as Reciever, and J. Clark Kelso
26 ("the Receiver"), as Receiver. Presently before the court is the
27 Receiver's motion to transfer this action to the Northern
28 District of California pursuant to 28 U.S.C. § 1404(a).

1 I. Factual and Procedural Background

2 On October 3, 2005, the Honorable Thelton Eugene
3 Henderson of the Northern District of California issued an
4 opinion in Plata v. Schwarzenegger, No. 01-1351, 2005 WL 2932253
5 (N.D. Cal. Oct. 3, 2005),¹ a class action challenging the
6 constitutional adequacy of medical care provided to CDCR inmates
7 with serious medical needs. Id. at *1. In his opinion, Judge
8 Henderson determined that the California prison medical care
9 system was "broken beyond repair." Id.

10 In response to these systemic defects, Judge Henderson
11 established a Receivership to manage the health care systems at
12 the CDCR's various institutions to bring the medical care up to
13 constitutional standards. Id. Judge Henderson subsequently
14 appointed defendant Sillen as the Receiver on February 14, 2006
15 (effective April 17, 2006) and charged him with the "duty to
16 control, oversee, supervise, and direct all administrative,
17 personnel, financial, accounting, contractual, legal, and other
18 operational functions of the medical delivery component of the
19 CDCR." Plata v. Schwarzenegger, No. 01-1351, slip op. at 2 (N.D.
20 Cal. Feb. 14, 2006) ("Order Appointing Receiver") (hereinafter
21 "OAR").

22 In a subsequent order on March 30, 2006, Judge
23 Henderson directed the CDCR, then under the control of Sillen, to

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25 ¹ The Receiver filed a Request for Judicial Notice in
26 which he asks the court to take notice of court documents
27 relating to both this action and the Plata case. (Docket No.
28 62.) The court will grant the Receiver's request, as the
documents are all public documents whose accuracy cannot be
questioned. Fed. R. Evid. 201; see U.S. ex rel. Robinson
Rancheria Citizens Council v. Borneo, Inc., 971 F.2d 244, 248
(9th Cir. 1992).

1 begin developing new processes for medical contract management.
2 Plata v. Schwarzenegger, No. 01-1351, slip op. at 5-7 (N.D. Cal.
3 Mar. 30, 2006). The March 30, 2006 Order required the CDCR to
4 pay "all current outstanding, valid, and CDCR approved medical
5 invoices (even in the absence of a separate written approved
6 contract) within 60 days of the date of this order." Id. at 5.
7 The Order further provided that during a 180-day planning period,
8 "to ensure continuity of medical care, and to mitigate the loss
9 of life or limb and preserve the limited pool of competent
10 providers, CDCR shall not be required to competitively bid
11 medical services contracts nor file bid exemption applications .
12 . . ." Id.

13 At about this same period, the CDCR entered into
14 negotiations with plaintiff--an administrator of prison health
15 care systems--to provide specialty medical services for inmates
16 at two California correctional facilities as part of a pilot
17 program. (Compl. ¶¶ 8, 20-21.) In early September 2006, CDCR
18 officials permitted plaintiff to begin performing services at the
19 two institutions notwithstanding the absence of a final executed
20 contract. (Id. ¶¶ 25-27.)

21 Shortly after plaintiff began providing its services,
22 the CDCR staff--noting that plaintiff was not licensed to
23 practice medicine in California--questioned whether plaintiff was
24 functioning in violation of California's prohibition on the
25 corporate practice of medicine. (Id. ¶¶ 33-34.) In January
26 2007, amid the ongoing concerns regarding the legality of
27 plaintiff's services, Sillen called for a halt to the CDCR's
28 processing of plaintiff's final contract and ordered the CDCR to

1 stop further payments on plaintiff's invoices. (Id. ¶¶ 36-37.)
2 Plaintiff nonetheless continued providing services without
3 compensation. (Id. ¶ 42.) During a February 16, 2007 meeting,
4 Sillen renewed his concerns to plaintiff regarding the legality
5 of its services and indicated that plaintiff could be paid only
6 if it was determined that it could lawfully provide services in
7 California. (Id. ¶ 44.) Plaintiff again continued to provide
8 services to the two institutions, purportedly in reliance on "Mr.
9 Sillen's representations regarding future payment." (Id. ¶ 45.)

10 On March 7, 2007, plaintiff provided Sillen with a
11 legal memorandum--drafted by its counsel--that concluded its
12 services were being lawfully provided. (Id. ¶ 46.) Sillen
13 "refused to accept the opinion," ultimately demanding that
14 plaintiff obtain an official opinion from the Medical Board of
15 California. (Id. ¶¶ 47-48.) When plaintiff failed to promptly
16 comply with his demand, Sillen effectively ended their
17 relationship when he allegedly "physically expelled Plaintiff['s]
18 personnel" from the two CDCR pilot program institutions on April
19 7, 2007. (Id. ¶¶ 50-51.)

20 On September 17, 2007, plaintiff filed a complaint in
21 Sacramento Superior Court against Sillen (in both his official
22 and individual capacities) and the CDCR. In its Complaint,
23 plaintiff alleges fifteen state law causes of action arising from
24 its purported reliance on certain misrepresentations that Sillen
25 and the CDCR made throughout the preliminary contract
26 negotiations. On October 16, 2007, Sillen removed the action to
27 this court pursuant to 28 U.S.C. § 1442(a)(1).

28 On January 23, 2008, Judge Henderson dismissed Sillen

1 as Receiver, simultaneously appointing Kelso as the new Receiver.
2 On February 14, 2008, this court dismissed the action on the
3 ground that plaintiff was required to obtain Judge Henderson's
4 permission to bring an action against the Receiver. (Docket No.
5 50.) Plaintiff then filed an ex parte application with Judge
6 Henderson in the Northern District requesting leave to file suit
7 against the Receiver, which was denied on the grounds that leave
8 would be futile because the Receiver was immune from suit.
9 Plaintiff appealed both rulings.

10 The Ninth Circuit reversed in part, finding that
11 permission from the appointing court was unnecessary to sue the
12 Receiver under the statutory exception in 28 U.S.C. § 959(a) and
13 that the Receiver was not immune from suit. Med. Dev. Int'l v.
14 Cal. Dept. of Corr. & Rehab., 585 F.3d 1211, 1216, 1219 (9th Cir.
15 2009). The Ninth Circuit then remanded the action to this court,
16 noting "that nothing in [its] opinion prevents the Eastern
17 District from coordinating with or, if appropriate, transferring
18 the action to the Northern District." Id. at 1222. The Receiver
19 subsequently filed a motion to transfer the action to the
20 Northern District. (Docket No. 60.) CDCR filed a statement of
21 its non-opposition to the motion to transfer. (Docket No. 66.)

22 II. Discussion

23 "For the convenience of parties and witnesses, in the
24 interest of justice, a district court may transfer any civil
25 action to any other district or division where it might have been
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brought." 28 U.S.C. § 1404(a).² Under § 1404(a), a district court "has discretion to adjudicate motions for transfer according to an individualized, case-by-case consideration of convenience and fairness." Jones v. GNC Franchising, Inc., 211 F.3d 495, 498 (9th Cir. 2000) (quoting Stewart Org. v. Ricoh Corp., 487 U.S. 22, 29 (1988)) (internal quotation marks omitted). To undertake this analysis of "convenience" and the "interests of injustice," a district court may weigh "multiple factors," including the plaintiff's choice of forum, the contacts relating to the plaintiff's cause of action in the chosen forum, the convenience of witnesses and parties, and the ease of access to sources of proof.³ Id. at 498-99; see DeFazio v. Hollister Employee Share Ownership Trust, 406 F. Supp. 2d 1085, 1088-89 (E.D. Cal. 2005) (Karlton, J.); Williams v. Bowman, 157 F. Supp. 2d 1103, 1106 (N.D. Cal. 2001).

"No single factor is dispositive and a district court

² The parties do not dispute that this case could have been brought in the Northern District of California, as defendants appear to be subject to personal jurisdiction in that district and venue would be proper there. See Robinson v. Mich. Consol. Gas Co., 918 F.2d 579, 586 (6th Cir. 1990) (finding actions against a receiver may be brought in the appointing court even without any independent grounds for asserting jurisdiction); Diners Club, Inc. v. Bumb, 421 F.2d 396, 398-401 (9th Cir. 1970); see also Straus Family Creamery v. Lyons, 219 F. Supp. 2d 1046, 1048 (N.D. Cal. 2002) (noting venue in a suit against a state agency is appropriate in any city in which the Attorney General has an office).

³ Other factors considered by courts include the availability of compulsory process to compel attendance of unwilling non-party witnesses, the location where relevant agreements were negotiated and executed, the state that is most familiar with the governing law, the differences in the costs of litigation in the two forums, the presence of a forum selection clause, and the relevant public policy of the forum state. GNC Franchising, 211 F.3d at 498-99.

1 has broad discretion to adjudicate motions for transfer on a
2 case-by-case basis." Ctr. for Biological Diversity v.
3 Kempthorne, No. 08-1339, 2008 WL 4543043, at *2 (N.D. Cal. Oct.
4 10, 2008) (citing Stewart Org., 487 U.S. at 29; Sparling v.
5 Hoffman Constr. Co., 964 F.2d 635, 639 (9th Cir. 1988)).
6 Ultimately, the party moving for a transfer of venue under §
7 1404(a) "bears the burden to show that another forum is more
8 convenient and serves the interest of justice." F.T.C. v. Watson
9 Pharm., Inc., 611 F. Supp. 2d 1081, 1086 (C.D. Cal. 2009) (citing
10 GNC Franchising, 211 F.3d at 499).

11 The Receiver's primary argument in support of its
12 motion to transfer venue avails the "interests of justice" aspect
13 of the § 1404(a) analysis. Specifically, the Receiver argues
14 that transfer of this action to the Northern District will
15 promote efficiency and save judicial resources in light of the
16 interrelatedness between the Plata case and this action.
17 (Receiver's Mem. I/S/O Mot. Transfer 10:27-11:27.)

18 "An important consideration in determining whether the
19 interests of justice dictate a transfer of venue is the pendency
20 of a related case in the transferee forum." Am. Canine Found. v.
21 Sun, No. 06-654, 2006 WL 2092614, at *3 (E.D. Cal. July 27, 2006)
22 (Karlton, J.) (citing A.J. Indus., Inc. v. U.S. Dist. Court for
23 the Cent. Dist. of Cal., 503 F.2d 384, 389 (9th Cir. 1974)); see
24 Williams v. Bowman, 157 F. Supp. 2d 1103, 1106 (N.D. Cal. 2001)
25 (listing "feasibility of consolidation of other claims" as a
26 factor relevant to the "interests of justice"). Indeed, the
27 Supreme Court and the Ninth Circuit have long recognized that
28 "[t]o permit a situation in which two cases involving precisely

1 the same issues are simultaneously pending in different District
2 Courts leads to the wastefulness of time, energy and money that §
3 1404(a) was designed to prevent." Cont'l Grain Co. v. The
4 FBL585, 364 U.S. 19, 26 (1960); see A.J. Indus., Inc., 503 F.2d
5 at 389 ("[T]he pendency of an action in another district is
6 important because of the positive effects it might have in
7 possible consolidation of discovery and convenience to witnesses
8 and parties."); Amazon.com v. Cendent Corp., 404 F. Supp. 2d
9 1256, 1260 (W.D. Wash. 2005) ("Litigation of related claims in
10 the same tribunal is strongly favored because it facilitates
11 efficient, economical and expeditious pre-trial proceedings and
12 discovery and avoids duplicitous litigation and inconsistent
13 results." (quotations and citations omitted)).

14 While the claims in the Plata case and this action are
15 not identical, this action is nevertheless closely related to the
16 case. The Receiver was appointed in the Plata case and Judge
17 Henderson has overseen the Receivership since he ordered its
18 creation in February 2006. In this action, plaintiff contends
19 that it was authorized to begin its pilot program with the CDCR
20 pursuant to the March 30, 2006 Order in Plata. The March 30,
21 2006 Order is also a significant source of disagreement between
22 the parties. (See Compl. ¶¶ 16-26; Receiver's RJN Exs. 3, 4.)
23 The interpretation of Judge Henderson's March 30, 2006 Order will
24 likely be dispositive in this action because it will determine
25 whether plaintiff was a medical provider authorized by the Order
26 to begin work for the CDCR without an executed contract or
27 competitive bidding. (See Compl. ¶¶ 23, 25, 30.)

28 Considerations of judicial economy weigh heavily in

1 favor of transfer. "Judicial resources are conserved when an
2 action is adjudicated by a court that has already committed
3 judicial resources to the contested issues and is familiar with
4 the facts of the case." Madani v. Shell Oil Co., No. 07-4296,
5 2008 WL 268986, at *2 (N.D. Cal. Jan. 30, 2008). To properly
6 adjudicate this action, this court would need to become familiar
7 with the facts giving rise to the March 30, 2006 Order. This
8 would require an investment of a substantial amount time by the
9 court and would result in the expense of significant resources by
10 the parties to fully brief the context giving rise to the March
11 30, 2006 Order in Plata. Unlike this court, Judge Henderson is
12 intimately familiar with the details of the Plata case, having
13 presided over the matter since April 2001. Given his extensive
14 knowledge of the case and the facts and circumstances giving rise
15 to his Order, Judge Henderson can more efficiently interpret the
16 March 30, 2006 Order than this court.

17 Transfer of this matter to the Northern District will
18 also ensure consistency in the interpretation of the March 30,
19 2006 Order, preventing uncertainty about the contractual
20 obligations of the Receiver and CDCR under the Receivership. See
21 In re Genesisintermedia, Inc. Sec. Litig., No. 01-9024, 2003 WL
22 25667662, at *4 (C.D. Cal. June 12, 2003); Argonaut Ins. Co. v.
23 Mac Arthur Co., No. 12-3878, 2002 WL 145400, at *4 (N.D. Cal.
24 Jan. 18, 2002) ("The best way to ensure consistency is to prevent
25 related issues from being litigated in two separate venues.").

26 Ultimately, the adjudication of this matter in the
27 Northern District will promote judicial economy, conserve the
28 parties' resources, and avoid inconsistent judgments--all in the

1 furtherance of the "interests of justice." Accordingly, the
2 interests of justice weigh heavily in favor of transfer. See,
3 e.g., Cardoza v. T-Mobile USA Inc., No. 08-5120, 2009 WL 723843,
4 at *6 (N.D. Cal. Mar. 18, 2009); Bomanite Corp. v. Newlook Int'l,
5 Inc., No. 07-1640, 2008 WL 1767037, at *11 (E.D. Cal. Apr. 16,
6 2008) (Wanger, J.); Alexander v. Franklin Res., Inc., No.
7 06-7121, 2007 WL 518859, at *3 (N.D. Cal. Feb. 14, 2007); Jolly
8 v. Purdue Pharma L.P., No. 05-1452, 2005 WL 2439197, at *2 (S.D.
9 Cal. Sept. 28, 2005).

10 In opposition to the Receiver's motion to transfer
11 venue, plaintiff argues that the court should give weight to
12 plaintiff's choice of forum. While a plaintiff's choice of forum
13 "is typically given considerable weight in the venue analysis. .
14 . [it] is not significant" in a matter where the plaintiff is not
15 a resident of the district the case is brought in. Deputy v.
16 Long-Term Disability Plan of Sponsor Aventis Pharm., No.
17 C02-2010, 2002 WL 31655328, at *3 (N.D. Cal. Nov. 21, 2002)
18 (citing Bryant v. ITT Corp., 48 F. Supp. 2d 829, 832 (N.D. Ill.
19 1999); Reiffin v. Microsoft Corp., 104 F. Supp. 2d 48, 54, n.12
20 (D. D.C. 2000)). Plaintiff's choice of forum was not this court
21 but the Sacramento County Superior Court; it was the defendant
22 who removed the action to this court. Further, plaintiff is a
23 Delaware corporation with its principal place of business in
24 Florida. Accordingly plaintiff's choice of forum should not be
25 given a substantial amount of weight.⁴ (Compl. ¶ 1.)

26
27 ⁴ Plaintiff also contends that disregarding plaintiff's
28 choice of forum and transferring this action to the Northern
District would defeat the purpose of § 959(a) and the Ninth

1 Moreover, while a defendant normally "must make a
2 strong showing of inconvenience to warrant upsetting the
3 plaintiff's choice of forum," Decker Coal Co. v. Commonwealth
4 Edison Co., 805 F.2d 834, 843 (9th Cir. 1986), this premise does
5 not implicate the court's power to transfer an action where the
6 interests of justice so require. See generally Madani, No.
7 07-4296, 2008 WL 268986, at *2 ("The question of which forum will
8 better serve the interest of justice is of predominant importance
9 on the question of transfer, and the factors involving
10 convenience of parties and witnesses are in fact subordinate."
11 (quoting Wireless Consumers Alliance v. T-Mobile USA, Inc., No.
12 03-3711, 2003 WL 22387598, at *4 (N.D. Cal. Oct.14, 2003)));
13 accord Amazon.com, 404 F. Supp. 2d at 1261.

14 Furthermore, the Receiver's arguments supporting
15 transfer arguably promote the mutual "convenience" of the parties
16 through the efficient use of their time and resources, and
17 plaintiff provides scant support for the argument that a transfer
18 from Sacramento to San Francisco would unduly inconvenience the
19 parties. Rather, plaintiff only asserts that it "anticipates
20 propounding extensive discovery requests on the CDCR and Receiver
21 seeking the production of both information and records, including
22 correspondence and emails" relating to contract negotiations of
23 CDCR. (Pl.'s Opp'n Mot. Transfer 6:12-14.)

24 While San Francisco is approximately ninety miles from
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26 Circuit's ruling in this matter. This argument is clearly belied
27 by the Ninth Circuit's own opinion, which specifically states
28 that "nothing in this opinion prevents the Eastern District from
coordinating with or, if appropriate, transferring the action to
the Northern District." Med. Dev. Int'l, 585 F.3d at 1222.

1 Sacramento, the inconvenience of transferring the action is not
2 considerable. As previously mentioned, plaintiff is a Delaware
3 corporation, with its principal place of business in Florida.
4 Plaintiff provided medical services to prisons located in
5 Southern California. Plaintiff and defendants' counsel reside in
6 San Francisco. There is no overwhelming nexus between this
7 action and the Eastern District, outside of the fact that the
8 Receiver and CDCR are located in Sacramento. Plaintiff has not
9 indicated how it would be materially inconvenienced by issuing
10 discovery requests for electronic and paper documents a mere
11 ninety miles from Sacramento. Plaintiff has also not identified
12 any witnesses that would be inconvenienced by discovery and
13 forced to travel to San Francisco.

14 The Receiver has carried his burden under § 1404(a) and
15 demonstrated that the interests of justice favor transferring
16 this action to the Northern District. These considerations weigh
17 heavily against plaintiff's choice of forum, particularly since
18 any inconvenience incident to transfer appears to be negligible.
19 Accordingly, the court will grant defendant's motion to transfer
20 venue.

21 IT IS THEREFORE ORDERED that the Receiver's motion to
22 transfer venue to the Northern District of California be, and the
23 same hereby is, GRANTED. The Clerk shall transmit the file to
24 the Clerk of the District Court for the Northern District of
25 California (San Francisco Division) for further proceedings.

26 DATED: January 21, 2010

27 

28 WILLIAM B. SHUBB

UNITED STATES DISTRICT JUDGE